EVIDENCE—WAIVER OF PRIVILEGED COMMUNICATIONS BY PATIENT.—In an action for injuries to the plaintiff's eye he testified that Dr. L treated the eye after the accident, that it was swollen, also that it was so bruised that the doctor told him he could not treat it at that time but to come back a few days later for treatment. Defendant then wished to show by Dr. L that the condition of the eye was not due to the accident but to its prior diseased condition. The trial court excluded this evidence. *Held* to be error, on the ground that the testimony of the plaintiff amounted to a waiver of his privilege. *McKenney* v. *American Locomotive Co.* (N. Y. 1914), 149 N. Y. Supp. 826.

At the common law professional communications made to a physician were not privileged, but today by statutory provision in many states the general rule is that a physician cannot, without the consent of the patient, testify concerning information which he may have acquired from a patient while attending him in a professional capacity, whether such information was orally communicated to the physician or obtained by an examination or observation of the patient. *Keast* v. *Santa Ysabel Co.*, 136 Cal. 256; *Gurley* v. *Park*, 135 Ind 440; *In Re Myers' Will*, 184 N. Y. 54; *Gartside* v. *Insurance Co.*, 76 Mo. 446; *Col. Fuel & Iron Co.* v. *Cummings*, 8 Col. App. 541. Such communications are privileged to enable a patient, without the danger of exposure, fully to disclose all facts necessary to his proper treatment, consequently any conduct by him indicating an intention to lift the bar of secrecy and privacy and to disclose privileged matters, operates as a waiver of the privilege. This he may do by suing the physician for malpractice (*Becknell* v. *Hosier*, 10 Ind. App. 5; *Cramer* v. *Hurt*, 154 Mo. 112); or by calling and permitting the physician to testify as to matters acquired in a professional capacity. *McKinney* v. *Ry. Co.*, 104 N. Y. 352; *Sovereign Camp* v. *Grandon*, 64 Neb. 39; *Lissak* v. *Crocker Estate Co.*, 119 Cal. 442. So the patient may, by himself testifying to confidential matters, waive his privilege. *Marx* v. *Manhattan Ry. Co.*, 56 Hun. (N. Y.) 575; *Rauh* v. *Deutscher Verein*, 51 N. Y. Supp. 985. But the mere fact that a patient, as in the principal case, in testifying mentions the name of the physician who treated him, and the general nature of the injury, should thereby waive his privilege is difficult to understand. *Williams* v. *Johnson*, 112 Ind. 273; *McConnell* v. *Osage*, 80 Ia. 293. For it is held that the statements of a patient of the general nature of an injury, of the fact that a certain physician treated him, and of other matters equally open to the observation of any other person are not privileged or confidential communications; and a physician might testify as to such matters without violating the privilege of the patient. *Jones* v. *Brooklyn Ry. Co.*, 3 N. Y. Supp. 253; *Edington* v. *Aetna Life Insurance Co.*, 77 N. Y. 564-571; *Becker* v. *Metropolitan Life Insurance Co.*, 90 N. Y. Supp. 1007; *May* v. *Northern Pacific Ry. Co.*, 32 Mont. 522.

HUSBAND AND WIFE—NECESSARIES.—Plaintiff, an attorney at law, sought to recover in an action against the husband for professional services rendered the defendant's wife during divorce proceedings, instituted by the husband, in which no divorce was granted. Plaintiff did not show any express con-

tract, but claimed that the services rendered were within the class of necessaries. *Held,* that the husband is not liable. *Meaher* v. *Mitchell,* (Me. 1914) 92 Atl. 492.

This case is one of first impression in this state. The question, whether legal services rendered to a wife in a divorce suit are necessaries for which the husband is liable, has been passed upon in several states, but the authorities are not in harmony. Such services have been held to be necessaries in several states and also in England. *Sprayberry* v. *Merk,* 30 Ga. 81; *McCurley* v. *Stockbridge,* 62 Md. 422; *Attoway* v. *Hamilton,* L. R. 3 C. P. D. 393; *Peck* v. *Marling,* 22 W. Va. 708. It is immaterial whether the wife was plaintiff or defendant in the divorce suit, the attorney's recovery is subject to the single requirement that he acted in good faith. *Dodd* v. *Hein,* 26 Tex. Civ. App. 164; *Preston* v. *Johnson,* 65 Ia. 285. The weight of authority denies the attorney the right to recover for such services in an independent action against the husband. Some courts that take this view proceed upon the principle that such services cannot be classed as necessaries. *Shelton* v. *Pendleton,* 18 Conn. 417; *Dow* v. *Eyster,* 79 Ill. 254; *Morrison* v. *Holt,* 42 N. H. 478. Since the modern view is to class as necessaries whatever is necessary for a wife's happiness, comfort and enjoyment of life, considering her station in life, (*Rayners* v. *Bennett,* 114 Mass. 424), it would seem to be proper to class legal services rendered in a divorce suit as such. Medical attendance is generally so classed. *Beveer* v. *Galloway,* 71 Ill. 517. To a woman the protection of her good name, when it is attacked by a divorce suit brought against her, may seem as important as the protection of her health. *Gosset.* v. *Patten,* 23 Kan. 340. In other cases, as in the principal case, the rule rests upon the ground that the divorce court has power to make a proper allowance for counsel fees. *Zent* v. *Sullivan,* 47 Wash. 315; *Clarke* v. *Burke,* 65 Wis. 359; *Westcott* v. *Hinckley,* 56 N. J. L. 343. The court in the principal case admits that legal services rendered in behalf of the wife in a divorce suit could properly be classed as necessaries, but it adopts the latter rule because it thinks "it best protects the rights of all the parties, and is in accord with sound public policy."

INJUNCTION—PICKETING.—Plaintiff's former employees and other members of the Molder's Union, having engaged in a general strike, sought to compel plaintiff to accede to their demands, by "picketing" the works for the purpose of interfering with non-union men employed, or seeking employment therein, by the use of threats, promises, persuasion and insulting language. Plaintiff brought a bill to enjoin same. *Held,* that peaceful persuasion to induce an employee to breach a contract of service, and any system of picketing, or even peaceful persuasion of others not to enter employment, or to induce them to quit, should be enjoined, where the intention and effect was to prevent lawful operation of a lawful business. *Hardie-Tynes Mfg. Co.* v. *Cruse,* (Ala. 1914), 66 So. 657.

The decision is based primarily upon the statutes of the state, making it a misdemeanor to do either of the acts complained of, but the court indicate that the absence of the same would not alter the case. It has long been